

CROSS REFERENCES

Disallowance of surtax exemption and accumulated earnings credit, see section 1551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1551 of this title.

§ 269A. Personal service corporations formed or availed of to avoid or evade income tax

(a) General rule

If—

(1) substantially all of the services of a personal service corporation are performed for (or on behalf of) 1 other corporation, partnership, or other entity, and

(2) the principal purpose for forming, or availing of, such personal service corporation is the avoidance or evasion of Federal income tax by reducing the income of, or securing the benefit of any expense, deduction, credit, exclusion, or other allowance for, any employee-owner which would not otherwise be available,

then the Secretary may allocate all income, deductions, credits, exclusions, and other allowances between such personal service corporation and its employee-owners, if such allocation is necessary to prevent avoidance or evasion of Federal income tax or clearly to reflect the income of the personal service corporation or any of its employee-owners.

(b) Definitions

For purposes of this section—

(1) Personal service corporation

The term “personal service corporation” means a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners.

(2) Employee-owner

The term “employee-owner” means any employee who owns, on any day during the taxable year, more than 10 percent of the outstanding stock of the personal service corporation. For purposes of the preceding sentence, section 318 shall apply, except that “5 percent” shall be substituted for “50 percent” in section 318(a)(2)(C).

(3) Related persons

All related persons (within the meaning of section 144(a)(3)) shall be treated as 1 entity.

(Added Pub. L. 97-248, title II, § 250(a), Sept. 3, 1982, 96 Stat. 528; amended Pub. L. 99-514, title XIII, § 1301(j)(4), Oct. 22, 1986, 100 Stat. 2657.)

AMENDMENTS

1986—Subsec. (b)(3). Pub. L. 99-514 substituted “section 144(a)(3)” for “section 103(b)(6)(C)”.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE

Section 250(c) of Pub. L. 97-248 provided that: “The amendments made by this section [enacting this sec-

tion] shall apply to taxable years beginning after December 31, 1982.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263A, 267, 280H, 441, 465, 469, 775 of this title.

§ 269B. Stapled entities

(a) General rule

Except as otherwise provided by regulations, for purposes of this title—

(1) if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation.

(2) in applying section 1563, stock in a second corporation which constitutes a stapled interest with respect to stock of a first corporation shall be treated as owned by such first corporation, and

(3) in applying subchapter M for purposes of determining whether any stapled entity is a regulated investment company or a real estate investment trust, all entities which are stapled entities with respect to each other shall be treated as 1 entity.

(b) Secretary to prescribe regulations

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance or evasion of Federal income tax through the use of stapled entities. Such regulations may include (but shall not be limited to) regulations providing the extent to which 1 of such entities shall be treated as owning the other entity (to the extent of the stapled interest) and regulations providing that any tax imposed on the foreign corporation referred to in subsection (a)(1) may, if not paid by such corporation, be collected from the domestic corporation referred to in such subsection or the shareholders of such foreign corporation.

(c) Definitions

For purposes of this section—

(1) Entity

The term “entity” means any corporation, partnership, trust, association, estate, or other form of carrying on a business or activity.

(2) Stapled entities

The term “stapled entities” means any group of 2 or more entities if more than 50 percent in value of the beneficial ownership in each of such entities consists of stapled interests.

(3) Stapled interests

Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of 1 of such interests the other such interests are also transferred or required to be transferred.

(d) Special rule for treaties

Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.